

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

BRIAN K. ELLIOT,)	
)	
Petitioner,)	
)	
v.)	No. 4:10-CR-29-HSM-SKL-1
)	4:16-CV-72-HSM
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM OPINION

Federal prisoner Brian K. Elliot (“Petitioner”) filed for post-conviction relief pursuant to 28 U.S.C. § 2255 on February 16, 2012 [Doc. 23; E.D. Tenn. Case No. 4:12-cv-13-HSM].¹ The Court denied that motion on February 20, 2015 [Docs. 31, 32]. On June 24, 2016, Petitioner filed a second motion attacking the same criminal conviction—this time relying on *Johnson v. United States*, 135 S. Ct. 2551 (2015) [Doc. 36]. Review leads the Court to conclude counsel intended the filing as a motion for leave to file a successive petition.

Under the “Antiterrorism and Effective Death Penalty Act of 1996,” Petitioner cannot file a second or successive § 2255 petition in the District Court until he has moved in the United States Court of Appeals for the Sixth Circuit for an order authorizing the District Court to consider the motion. 28 U.S.C. § 2255(h). No such order has been received by this Court. Accordingly, the Clerk will be **DIRECTED** to **TRANSFER** the filing [Doc. 36] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

¹ Each document will be identified by the Court File Number assigned to it in the underlying criminal case: E.D. Tenn. Case No. 4:10-cr-29-HSM-SKL-1.

ORDER ACCORDINGLY.

/s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE